

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PAUL JAMES UPSHER,	)	
	)	Civil Action No. 04 - 1707
Petitioner,	)	
	)	
vs.	)	Chief Judge Donetta Ambrose /
	)	Magistrate Judge Lisa Pupo Lenihan
DAVID GOODE; Superintendent, STEPHEN	)	
ZAPALLA; The District Attorney of	)	
Allegheny County, and JERRY PAPPERT; the	)	
Attorney General of Pennsylvania,	)	
	)	
Respondents.	)	

**MEMORANDUM ORDER**

The above captioned Petition was received by the Clerk of Court on November 10, 2004, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Doc. No. 4), filed on June 13, 2006, recommended that the Petition for Writ of Habeas Corpus be dismissed prior to being served, for lack of subject matter jurisdiction as a "second or successive" petition, and that a certificate of appealability be denied. Service was made on the Petitioner at two addresses, as there is some confusion as to which was correct. They were: 1 Woodland Drive, P.O. Box 945, Marienville, PA 16239 and S.C.I. Luarel Highlands, 5706 Glades Pike, P.O. Box 631, Somerset, PA 15501-0631. The Petitioner was informed that in accordance with Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, he had ten (10) days to file any objections. Petitioner filed two motions, which the Court interpreted


as motions to extend time. The Court granted the motions and established a deadline of August 31, 2006 as the date objections to the report and recommendation were due. No objections were ever filed. After review of the pleadings and the documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 14<sup>th</sup> day of Sept., 2006;

**IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED** for lack of subject matter jurisdiction as a "second or successive" petition.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. No. 4) of Magistrate Judge Lenihan, dated June 13, 2006, is adopted as the opinion of the court.

  
Chief Judge Donetta W. Ambrose  
United States District Judge

cc: Lisa Pupo Lenihan  
U.S. Magistrate Judge

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